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TAGS: [ENRG](#) [EINV](#) [ECON](#) [EC](#)
SUBJECT: ENERGY MINISTRY PLANS NEW LAWS UNDER CONSTITUENT
ASSEMBLY

REF: A. A: 06 QUITO 1920

[1](#)B. B: 06 QUITO 1735

Classified By: DCM Jefferson Brown, Reasons 1.4 (b&d)

[1](#)1. (C) Summary: Ecuador's Energy Ministry hopes to use the upcoming national constituent assembly to make major changes to the laws regulating the sector, according to the Under Secretaries of Petroleum, Mining, and Electricity. They plan

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to use the Assembly as a substitute Congress, introducing and passing laws that would serve largely to increase and consolidate the ministry's power over Ecuador's petroleum and electricity sectors. Planned changes include giving state oil company Petroecuador financial autonomy and eliminating its role as "partner" for foreign oil companies, giving the ministry direct control over petroleum contracts, replacing the fund that pays electricity distributors with a ministry-controlled holding company, and possibly restricting large-scale mining in Ecuador. End Summary.

[1](#)2. (C) Ecuador on April 15 voted in favor of holding a constituent assembly with "full powers," and will elect delegates for the assembly on September 30. The Assembly would be installed by mid-November and produce a new constitution by July 2008. Based on conversations with senior energy officials, it appears the Energy Ministry expects to treat the Assembly as a session of Congress, attempting to pass new laws and alter existing laws. Under Secretary for Hydrocarbons Jorge Alban cited the Assembly's

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"plenos poderes" (full powers), which some believe refers only to powers to rewrite the Constitution but others believe gives the Assembly the ability to dissolve Congress and assume its functions.

[1](#)3. (C) Alban reported that the ministry plans to make a number of changes that would modernize and grow Ecuador's petroleum sector. He noted that the Administration does not want to stop new petroleum production altogether (as some government officials have implied), but wants to "use well what we have." First, the ministry plans to introduce a special law to reform state oil company Petroecuador, giving it financial autonomy. (Currently, the Ministry of Finance controls Petroecuador's revenues and only distributes what it

deems necessary for Petroecuador's operations. Consequently, the company is usually short of cash, unable to perform needed maintenance on wells, and hindered from considering new projects, ref A.) Second, the ministry would change Ecuador's hydrocarbons law to eliminate Petroecuador's role as the administrator of petroleum contracts with private companies, transferring that responsibility to the ministry itself. Petroecuador would no longer be the partner company for foreign operators in Ecuador but would be "just another operator," and would allegedly have to compete for contracts along with other firms. This move would purportedly streamline the contract process in Ecuador and eliminate opportunities for corruption that are currently so rampant in Petroecuador, but would also serve to give the ministry more control over contracts with foreign companies.

¶4. (C) In the electricity sector, the ministry wants a "more empresarial" structure. Currently, the sector has a complicated ownership structure and revenue sharing process under the quasi-governmental "Fondo de Solidaridad," which is nontransparent and subject to manipulation. Although distributors are government-owned, the Fund does not have direct control over them (many are overstaffed, unable or unwilling to collect from clients, cash strapped and poorly run, and controlled by powerful unions, ref B). Electricity Under Secretary Alecksey Mosquera explained that the ministry plans to introduce a law in the constituent assembly to eliminate the Fund entirely and create in its place a holding company managed by the Energy Ministry that would have more control over government-owned distributors and generators. In addition, the law would permit efficient distributors to take over (and essentially absorb) poorly run distributors.

¶5. (C) Mining Under Secretary Jorge Jurado asserted that mining is much more environmentally damaging than petroleum operations, and should therefore be put to a "consulta" or referendum of the population to ask Ecuadorians for their opinion on whether large scale mining should take place in Ecuador (supposedly the referendum would note that the

country would lose significant resources if mining were eliminated). It would further ask citizens for their views on when and where this type of mining should take place. Based on the referendum's results, provided large-scale mining was not opposed completely, Jurado expects that the ministry would introduce one or two broad laws or decrees in the constituent assembly, such as forbidding mining in environmentally sensitive "protected areas" or forbidding "open" mining.

Comment:

¶6. (C) This is the first insight we've been provided into how one ministry is thinking about how to use the constituent assembly to advance its agenda, and we have no indication whether this approach reflects a broader Administration perspective. In general, the Energy Ministry appears to want to consolidate its power over other energy sector institutions -- but Petroecuador will resist some of these moves, and it's not clear which side will prevail. The ministry is making two assumptions regarding the constituent assembly - first, that the Assembly will have powers to act as a Congress and pass laws, not just design a new constitution, and second, that the freely-elected Assembly will be sympathetic to the Administration's goals. This is likely given Correa's current popularity, but not a given, since the elections for the Assembly will be hotly contested by the opposition.

¶7. (C) There are advantages and disadvantages to the proposed changes. They could make Ecuador's dysfunctional energy sector decision-making process more efficient by concentrating power within the ministry, but at the same time would eliminate or marginalize other institutions that provide important oversight functions and have a more technical perspective than the ministry. The changes may not address some of the underlying problems that hamper the sector. For example, in the electricity area, switching to a

more powerful holding company will not necessarily solve existing cash flow and management problems, and could permit more centralized corruption. Also, giving Petroecuador fiscal autonomy may provide it with more resources, but will not necessarily address its other major constraints - inefficiency and widespread corruption.

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